

§ 370.2 Definitions.

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

Commission means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *commission* means the emergency response commission for the Tribe under whose jurisdiction the facility is located. In absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

Committee or local emergency planning committee means the local emergency planning committee appointed by the emergency response commission.

Environment includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

Extremely hazardous substance means a substance listed in the appendices to 40 CFR part 355, Emergency Planning and Notification.

Facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). *Facility* shall include manmade structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

Hazard category means any of the following:

(1) *Immediate (acute) health hazard*, including *highly toxic*, *toxic*, *irritant*, *sensitizer*, *corrosive*, (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usu-

ally occurs rapidly as a result of short term exposure and is of short duration;

(2) *Delayed (chronic) health hazard*, including *carcinogens* (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long term exposure and is of long duration;

(3) *Fire hazard*, including *flammable*, *combustible liquid*, *pyrophoric*, and *oxidizer* (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations);

(4) *Sudden release of pressure*, including *explosive* and *compressed gas* (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations); and

(5) *Reactive*, including *unstable reactive*, *organic peroxide*, and *water reactive* (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations).

Hazardous chemical means any hazardous chemical as defined under § 1910.1200(c) of Title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any

patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the border of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

Inventory form means the Tier I and Tier II emergency and hazardous chemical inventory forms set forth in subpart D of this part.

Material Safety Data Sheet or *MSDS* means the sheet required to be developed under §1910.1200(g) of Title 29 of the Code of Federal Regulations.

Person means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of State, or interstate body.

Present in the same form and concentration as a product packaged for distribution and use by the general public means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public.

State means any State of United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

TPQ means the threshold planning quantity for an extremely hazardous substance as defined in 40 CFR part 355.

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§ 370.5 Penalties.

(a) *MSDA reporting.* Any person other than a governmental entity who violates any requirement of §370.21 shall be liable for civil and administrative

penalties of not more than \$10,000 for each violation.

(b) *Inventory reporting.* Any person other than a governmental entity who violates any requirement of §370.25 shall be liable for civil and administrative penalties of not more than \$25,000 for each violation.

(c) *Continuing violations.* Each day a violation described in paragraph (a) or (b) of this section continues shall constitute a separate violation.

Subpart B—Reporting Requirements

§ 370.20 Applicability.

(a) *General.* The requirements of this subpart apply to any facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(b) *Minimum threshold levels.* Except as provided in paragraph (b)(3) of this section, the minimum threshold level for reporting under this subpart shall be as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of a facility subject to this subpart shall submit an MSDS on or before October 17, 1990 (or within three months after the facility first becomes subject to this subpart), for all hazardous chemicals present at the facility at any one time in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.) and for all extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs.—approximately 55 gallons) or the TPQ, whichever is lower.

(2) The owner or operator of a facility subject to this subpart shall submit the Tier I form (or Tier II form) on or before March 1, 1991 (or March 1 of the first year after the facility first becomes a subject to this subpart), and annually thereafter, covering all hazardous chemicals present at a facility at any one time during the preceding calendar year in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.) and extremely hazardous substances present at the facility in an amount greater than or equal to 500